

¹ 5 U.S.C. § 8101 *et seq.*

Appellant filed a notice of recurrence of disability on July 10, 2007 alleging that on September 30, 2006 she experienced a bout of extreme pain, numbness and tingling in her legs and buttocks. A magnetic resonance imaging (MRI) scan of November 9, 2006 demonstrated multilevel degenerative disc and facet disease most pronounced at L5-S1 with severe bilateral neural foraminal stenosis. On December 7, 2006 Dr. Timothy J. Johans, a Board-certified neurosurgeon, performed an L5-S1 decompressive hemilaminotomy, medial facetectomy and wide foraminotomy. On March 7, 2007 he performed a second right L5-S1 hemilaminotomy, complete facetectomy and foraminal decompression. Dr. Johans examined appellant on March 26, 2007 and stated that following the second surgery her numbness had improved, her pain was much better and strength was normal. He released her to return to light-duty work. In a note dated July 23, 2007, Dr. Johans stated that appellant reported being pushed over by her horse in June 2007 and that she hurt her back while trying to pick up her mother-in-law.

By decision dated September 19, 2007, OWCP denied appellant's claim on the grounds that the medical evidence did not establish a causal relationship between her current disability and her accepted employment injury.

Appellant filed a traumatic injury claim on October 18, 2007. She alleged that she fell that day when a cart she was pushing caught the edge of the door hitting her right arm, OWCP File No. xxxxxx605. Appellant alleged injury to her right arm, elbow, back and shoulders. X-rays dated October 18, 2007 revealed moderate to advanced degenerative arthritic changes with no evidence of a superimposed acute injury. The emergency room physician diagnosed right elbow contusion and hematoma and lumbar contusion and coccygeal contusion on October 18, 2007. An MRI scan dated October 27, 2007 found right laminectomy defect at L5-S1 and diffuse annular bulging with possible recurrent disc herniation and severe bilateral neural foraminal narrowing at the L5-S1 level. Appellant also demonstrated degenerative disc changes and facet joint changes resulting in mild spinal stenosis at L4-5. OWCP accepted this claim for contusion of the right elbow and contusion of the back on November 30, 2007.

Appellant requested a schedule award on December 6, 2008 under OWCP File No. xxxxxx603. In a letter dated January 8, 2009, OWCP requested additional medical information from appellant regarding her permanent impairment for schedule award purposes. In a report dated March 6, 2009, Dr. Brian Johns, Board-certified in occupational medicine, noted that appellant stopped work on January 1, 2008. He opined that appellant had reached maximum medical improvement. Dr. Johns found evidence of nonorganic contributors to her pain including positive Waddell signs. He evaluated appellant's permanent impairment under the fifth edition of the A.M.A., *Guides* and found 10 percent impairment of the whole person based on her back condition.

In a letter dated July 22, 2010, OWCP stated that appellant's 2007 claim was accepted for contusion of the right arm and contusion of the back. It noted that Dr. Johns did not describe any permanent impairment to her extremities.

By decision dated July 22, 2010, OWCP denied appellant's claims for a schedule award on the grounds that the medical evidence did not establish permanent impairment to a scheduled member.

Counsel requested a telephonic hearing. Appellant testified on November 2, 2010 that she was not knocked down by her horse or attempt to lift her mother-in-law.

By decision dated January 25, 2011, OWCP's hearing representative reviewed and affirmed the July 22, 2010 decision. Appellant failed to submit sufficient medical opinion evidence to establish permanent impairment of a scheduled member.

LEGAL PRECEDENT

The schedule award provision of FECA² and its implementing regulations³ set forth the number of weeks of compensation payable to employees sustaining permanent impairment for loss of use, of scheduled members or functions of the body. FECA, however, does not specify the manner in which the percentage loss of a member shall be determined. The method used in making such determination is a matter which rests in the discretion of OWCP. For consistent results and to ensure equal justice, the Board has authorized the use of a single set of tables so that there may be uniform standards applicable to all claimants. OWCP evaluates the degree of permanent impairment according to the standards set forth in the specified edition of the A.M.A., *Guides*.⁴

FECA does not authorize the payment of schedule awards for the permanent impairment of the whole person.⁵ Payment is authorized only for the permanent impairment of specified members, organs or functions of the body.

No schedule award is payable for a member, function or organ of the body not specified in the Act or in the regulations.⁶ Neither FECA nor the implementing federal regulations provide for the payment of a schedule award for the permanent loss of use of the back or spine.⁷

Amendments to FECA, however, modified the schedule award provisions to provide for an award for permanent impairment to a member of the body covered by the schedule regardless of whether the cause of the impairment originated in a scheduled or nonscheduled member. As the schedule award provisions of FECA include the extremities, a claimant may be entitled to a schedule award for permanent impairment to a limb even though the cause of the impairment originated in the spine.⁸

² 5 U.S.C. §§ 8101-8193, 8107.

³ 20 C.F.R. § 10.404.

⁴ For new decisions issued after May 1, 2009 OWCP began using the sixth edition of the A.M.A., *Guides*. A.M.A., *Guides*, 6th ed. (2009); Federal (FECA) Procedure Manual, Part 2 -- Claims, *Schedule Award and Permanent Disability Claims*, Chapter 2.808.6a (January 2010); Federal (FECA) Procedure Manual, Part 3 -- Medical, *Schedule Awards*, Chapter 3.700, Exhibit 1 (January 2010).

⁵ *Ernest P. Govednick*, 27 ECAB 77 (1975); *W.D.*, Docket No. 10-274 (issued September 3, 2010).

⁶ *William Edwin Muir*, 27 ECAB 579 (1976); *W.D.*, *supra* note 5.

⁷ FECA itself specifically excludes the back from the definition of organ. 5 U.S.C. § 8101(19).

⁸ *Rozella L. Skinner*, 37 ECAB 398 (1986); *W.D.*, *supra* note 6.

ANALYSIS

Appellant has two separate traumatic injury claims accepted for lumbar strain due to the September 6, 2003 employment injury and the right elbow and contusion of the back due to the October 18, 2007. She also underwent two back surgeries in late 2006 and early 2007 in the form of right L5-S1 hemilaminomy and foraminal decompression.

Appellant filed claims for a schedule award under both claims and submitted a report from Dr. Johns dated March 6, 2009 finding that she has 10 percent impairment of the whole person due to her diagnosed back conditions. As noted above, she is not entitled to a schedule award under FECA for either the whole person or the back as neither of these body parts is listed as a schedule member. There is no medical evidence in the record describing permanent impairment of a schedule member such as the upper or lower extremities. Without medical evidence addressing a scheduled member, the Board finds that appellant has not submitted the necessary medical opinion evidence to establish permanent impairment under FECA and is therefore not entitled to a schedule award.

Appellant may request a schedule award or increased schedule award based on evidence of a new exposure or medical evidence showing progression of an employment-related condition resulting in permanent impairment or increased impairment.

CONCLUSION

The Board finds that appellant has not established entitlement to a schedule award under FECA.

ORDER

IT IS HEREBY ORDERED THAT the January 25, 2011 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: November 1, 2011
Washington, DC

Colleen Duffy Kiko, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge
Employees' Compensation Appeals Board